

Ransom payments – funding terrorism, are they legal?



Governments deplore the practice, but better ransomed alive than rescued dead, argues Nigel Bance, who monitors kidnapping and piracy worldwide.

'Doesn't insurance against kidnap for ransom encourage the crime?' is a frequently asked question on the website of Hiscox, one of the world's largest specialist insurers of risks that other insurers steer away from. The answer is that only 1% of kidnaps are actually covered by insurance, says Hiscox, further suggesting that kidnapers, when choosing victims, do not deliberately target the insured.

Ransom payments are again in the spotlight following June 2013 discussions by G8 leaders regarding the funding behind the growing number of terrorist groups and payments to Somali and Yemeni pirates. Their released statement repeated previous announcements condemning payment for ransom, stating that it fuelled Al Qaeda-affiliated and other Islamist extremist groups. It would be political suicide for governments to publicly say otherwise, but in reality some G8 members have been left with no choice but to resort to such payment in order to secure the release of their nationals.

The German government reportedly

paid a ransom of \$6mn in 2003 for its remaining nine nationals amongst a group of 32 tourists taken in Algeria by the Algerian Islamic Militant Group for Preaching and Combat. Some of the group had already been rescued by the Algerian military, but a standoff followed. The Swiss government also made a contribution for its four nationals, despite its own long-held banning of kidnap insurance.

Italy, like Switzerland, maintains a similar sanction. However, kidnap and ransom cover can be obtained from underwriters in Jersey, Guernsey and Bermuda. Ransom payments were outlawed in Italy in 1991 in legislation that included the draconian step of freezing assets and bank accounts of a victim's family to ensure non-payment. With two female aid workers being held by militants in Iraq in 2004, Italy's Foreign Minister continued to deny that his government ever paid ransom; but the face of Prime Minister Silvio Berlusconi was wreathed in smiles as the two arrived home to a tumultuous welcome in Rome after a ransom of \$2mn had been paid.

One British hostage, the unfortunate Ken Bigley, was not so lucky, beheaded despite frantic pleas from his family for Prime Minister Tony Blair to intercede. Efforts were made to save Bigley's life, none more so by the lead officer in the Hostage Crisis Negotiation Unit (HCNU) in the Metropolitan Police. That hugely experienced officer had recently been successful in Nigeria, securing the release of a young baby without a ransom.

More recently, French President François Hollande made it clear in early 2013 that his government would never accede to ransom demands. However, with French citizens and companies very much in the front line in its former African colonies, that hard-line approach has been increasingly tested. The release of the Moulin-Fournier family from the clutches of the notorious Boko Haram group, that has spread terror across north and central Africa, again raised doubts as to whether the French government adheres to its public statements. Was a ransom paid to secure the family's release?

'Better ransomed alive than rescued dead' has a resonance when hostage recovery attempts go catastrophically wrong. A joint Nigerian and British military attempt in Sokoto, northern Nigeria, did not save the lives of two hostages, a Briton and Italian, in March 2012. French commandoes stormed a Somali-held yacht in April 2009 after the Sarkozy government felt it had no choice but to end the two-day ordeal, and one victim died in the crossfire. It must be stressed, though, that there are cases

The transport of ransom monies carries enormous risks – pictured is a ransom payment of \$1.25m (right to left: ready for counting, counted, bagged up) which secured the safe release of the victim

when governments need to militarily act if lives are in imminent danger.

The US put in place its own method of trying to solve the issue of piracy when Barack Obama issued his Executive Order 13536 in April 2010, which was designed 'to block property of certain persons contributing to Somalia', and a ransom payment procedure was instigated through a hotline to the Office of Foreign Assets Control (OFAC) to seek permission to pay. That EO created confusion as to its global scope and the implications for foreign entities with representation in the US. A hijacked ship, foreign-owned, but with a cargo that was partly or fully-US owned was another grey area.

The US administration has always linked piracy payments to the funding of terrorist groups. However, that relationship has never been proven – even though it is categorically impossible to say for certain, given the problem in tracking flow of funds. What is certain is that ransoms have lined the pockets of the investors, the pirates and the pirate commanders, and these payments have enriched the pirate safe havens on the Somali coast. The commander organising the hijacking of the oil tanker *Maran Centaurus*, released in 2010, skimmed off a side payment of \$750,000 into his account in Nairobi. This skimming practice has only increased in line with rising ransom demands. Upon the release in March this year of *MT Smyrni*, another crude oil tanker, after payment of a record \$14.5mn, the pirate commander raked in a personal fee of \$2.5mn. Since 2008, 132 vessels have been taken by the pirates and substantial ransoms have been paid. On the positive side, very few crew members have died despite the usual threat of crew torture and execution.

More recently, Shipcraft, owner of the Danish-flagged *MV Leopard*, paid 'a considerable ransom' to secure the release of six crew in April, after a two-year incarceration. Initially, the shipowner had pleaded that given the company's size the demanded ransom was totally unrealistic. So began the two-year impasse. Villy Sovndal, the Danish Foreign Minister, is on record saying Denmark doesn't negotiate with criminals or pay ransoms, but the release of *Leopard* illustrates how through agreement, careful negotiation and patience the men could at last return home.

Legal precedent

There is precedent as to the legality of a ransom payment, tested in the High Court in London in February 2010 in the decision handed down in the *Masefield AG v Amlin Corporate Member* case. The case revolved around the loss of a consignment of biodiesel onboard the

Bunga Melati Dua, which had been taken by pirates in the Gulf of Aden. The claimant, Masefield, had tendered notice of cargo abandonment and total loss, and expected the insurer to pay. Expert opinion quickly turned the claim into a test case on whether any payment of ransom was contrary to public policy. Masefield had reverted to an 1854 precedent, *Dean v Hornby*, referring to a British man-of-war taken by pirates also around the Horn of Africa. The judge eventually had to conclude that a ransom payment was in itself not illegal under English Law, and was not 'persuaded' that such payments ran contrary to public policy.

Further opinion was tested in the House of Commons on whether ransom breached the Terrorism Act 2000, as proceeds might well be channelled to terrorists. There is an extra-territorial jurisdiction over such offences, so a UK national or entity could be found guilty in a British court if the payments were made overseas. Under compliance, the authorities need clarification that the ransom is paid purely for personal gain and not laundered or paid directly to any terrorist organisation. That is the legal position, but the House of Lords EU Committee reported in May 2009, after taking evidence from insurance companies, kidnap negotiators and other parties, that despite the clear evidence that terrorist organisations did exist in Somalia and in other territories nearby, it was 'not thought at the present time that Somali threats are connected in any systematic way to those terrorist organisations'. The committee covered itself, stating circumstances could change and such future payments might be deemed a prosecutable offence.

In a number of major oil-producing countries, there is a mixed attitude to ransom payments. With Iraq's dire record of victim executions, companies, especially operators and contractors, must take immediate remedial action to secure release of workers. The authorities interfere when hostages are taken, which can seriously undermine the abilities of the crisis management companies to operate and ratchet up the risk for all parties, especially over the transportation of cash. Ransoms do take place, but under the radar of the authorities in order to secure a safe release.

A similar situation prevails to some extent in Colombia, which bars not only ransom payments but any kidnap and ransom insurance. Colombian citizens can insure themselves through underwriters centred in Miami, which specialises in Central and South America. Four Chinese oil workers were taken in Colombia in 2011 and only released in November 2012 after the most difficult

negotiations that entailed moving ransom money across the border. Government intervention and the barriers thrown up usually results in a lengthy period of captivity before hostages are released. FARC, the group currently in peace negotiations with the government has renounced kidnapping but its rival, the ELN, is still active. The *Bandas Criminales*, the *Bacrim*, now poses the biggest threat in Colombia.

Venezuela, too, bans payment for ransom. A major oil province riddled with corruption, crisis management consultants are banned from operating here, even threatened with prosecution. As a result, negotiations are often conducted via video outside the country's borders, which can hinder the process. The security position has significantly worsened in the past year with Nicolas Maduro, the new President, persevering with his plan to create a workers' militia, which can only escalate the number of arms on the streets. Many high net-worth individuals have left the country.

In Nigeria, the Inspector General of Police publicly stated in June why relatives of kidnap victims are compelled to pay ransom, understanding their frustrations with the authorities, the lamentable level of security and the state's inability to track down kidnapers. The worsening security situation has led Nigeria to become one of the most expensive oil-producing nations in which to operate. Shell's Nigerian subsidiary – Shell Petroleum Company of Nigeria, in which Shell has a 30% stake – has declined to update its 2009 statement that up to 300 of its staff had been kidnapped, but the number has risen. With Shell, ExxonMobil, Chevron, Total and Eni accounting for 90% of total Nigerian crude output, the threat to them is not just from the kidnapers, the Islamist groups targeting the oil sector, and pirates in the Gulf of Guinea, but also from pilferers, which is seriously stifling production. The Shell joint venture lost 43,000 b/d to theft in 2012 and this year the loss has risen to 60,000 b/d, contributing to a 20% output reduction.

The daily reality of operating in the commercial world is fortunately far removed from the ambition of politicians and their public utterances. 'Better ransomed alive than rescued dead' at least provides an assurance to ship crews and onshore hostages that the wheels are in motion to get them out, alive and safe. ●

Note: There are few crisis management companies with experience. Amongst them are Compass Risk Management, Arcis International and Neil Young Associates. Exclusive Analysis, part of IHS, provides global country risk analysis.